MONTANA LEGISLATIVE HISTORY

Chapter 531 19 99

Bill H 669 S _____ Original bill & history Y C

H. Committee on Taxation			S. Committee on Taxation		
Hearing Date(s)	3/8	X C	Hearing Date(s)	4/5	X C
	3/22	X C		4/9	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___ Yes X No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

OF THE FUTURE FISHERIES REVIEW PANEL AND EXTENDING THE TERMINATION DATE OF THE FUTURE FISHERIES IMPROVEMENT PROGRAM; AMENDING SECTIONS 15-38-202 AND 87-1-273, MCA, AND SECTION 5, CHAPTER 463, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE . . 2249

530 *(House Bill No. 661; Rehbein)* REVISING THE TAXATION OF OIL PRODUCTION PRODUCED FROM A STRIPPER WELL; REVISING THE DEFINITION OF "STRIPPER OIL"; REDUCING THE TAX RATE ON CERTAIN STRIPPER OIL PRODUCTION; CLARIFYING THE REQUIREMENTS FOR REPORTING OIL AND NATURAL GAS PRODUCTION FROM PRE-1985 WELLS AND POST-1985 WELLS; AMENDING SECTIONS 15-36-303, 15-36-304, 15-36-311, AND 15-36-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2254

531 *(House Bill No. 669; Story)* REVISING AND CLARIFYING THE VALUATION OF RAILROAD TRANSPORTATION PROPERTY FOR THE PURPOSES OF PROPERTY TAXATION; SPECIFYING THE METHODS TO BE USED BY THE DEPARTMENT OF REVENUE IN THE VALUATION OF RAILROAD TRANSPORTATION PROPERTY; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-8-111, 15-23-101, AND 15-23-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . 2266

532 *(Senate Bill No. 54; Halligan)* GENERALLY REVISING THE YOUTH COURT ACT; GRANTING GREATER AUTHORITY OVER CERTAIN JUVENILES TO THE DISTRICT COURT; GRANTING THE DEPARTMENT OF CORRECTIONS AUTHORITY TO DETERMINE AN EMERGENCY CAPACITY FOR STATE YOUTH CORRECTIONAL FACILITIES AND SYSTEMS; CREATING THE CRIMINALLY CONVICTED YOUTH ACT GRANTING ADDITIONAL DUE PROCESS TO JUVENILE CRIMINAL OFFENDERS; AMENDING SECTIONS 41-5-103, 41-5-121, 41-5-206, 41-5-332, 41-5-348, 41-5-1301, 41-5-1302, 41-5-1415, 41-5-1501, 41-5-1503, 41-5-1513, 41-5-1803, 46-24-211, AND 52-5-129, MCA 2270

533 *(Senate Bill No. 59; Wells)* GENERALLY REVISING FISH AND GAME LICENSING STATUTES; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ESTABLISH HUNTING LICENSE PREFERENCE SYSTEMS; CLARIFYING WHEN A 12-YEAR-OLD PERSON MAY HUNT; ESTABLISHING ADDITIONAL APPLICATION FEES APPLICABLE TO RESIDENT AND NONRESIDENT HUNTING LICENSE APPLICANTS WHO CHOOSE TO PARTICIPATE IN A COMMISSION-ADOPTED PREFERENCE SYSTEM; ALLOWING A NONRESIDENT TO PAY $25 TO PARTICIPATE IN A PREFERENCE SYSTEM FOR DEER AND ELK PERMITS; AMENDING SECTIONS 87-1-301, 87-2-113, 87-2-401, 87-2-402, 87-2-404, 87-2-501, 87-2-504, 87-2-505, 87-2-507, 87-2-508, 87-2-510, 87-2-701, AND 87-2-711, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2285

534 *(Senate Bill No. 172; Waterman)* AUTHORIZING A 20 PERCENT TELEPHONE COMPANY LICENSE TAX CREDIT FOR ACCELERATED DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE IMPROVEMENTS; PROVIDING FOR A COMPETITIVE ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE GRANT PROCESS; AND PROVIDING A DELAYED EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 2294

535 *(Senate Bill No. 192; Bohlinger)* CLARIFYING THAT INTERNET ACCESS SERVICES ARE NOT TAXABLE UNDER THE LICENSE TAX

3/10 Introduced and 1st Reading
3/10 Referred to Taxation
3/10 Fiscal Note Requested
3/16 Fiscal Note Received
3/17 Fiscal Note Printed
3/19 Hearing
3/25 Tabled in Committee
3/31 Missed Deadline for Revenue Bill Transmittal

HB 666 Introduced by Ohs, et al. *LC1077 Drafter: K. Williams*

Generally Revise the Sanitation in Subdivisions Act;...

3/10 Introduced and 1st Reading
3/10 Referred to Natural Resources
3/10 Fiscal Note Requested
3/11 Fiscal Note Received
3/18 Fiscal Note Printed
3/19 Hearing
3/19 Tabled in Committee
3/31 Missed Deadline for Revenue Bill Transmittal

HB 667 Introduced by Hibbard *LC1667 Drafter: Martin*

Allow Certain Rural Forest Land Consisting of Contiguous Land of 5 Acres or More but less than 15 Acres to Be Classified and Taxed as Forest Land;...

1/14 Fiscal Note Needed
3/11 Introduced and 1st Reading
3/11 Referred to Taxation
3/31 Missed Deadline for Revenue Bill Transmittal

HB 668 Introduced by Hibbard, et al. *LC0510 Drafter: Martin*

Revise and Clarify the Valuation of Centrally Assessed Property for the Purposes of Property Taxation;...

3/11 Introduced and 1st Reading
3/11 Referred to Taxation
3/11 Fiscal Note Requested
3/18 Hearing
3/18 Fiscal Note Received
3/19 Fiscal Note Signed
3/20 Fiscal Note Printed
3/22 Tabled in Committee
3/31 Missed Deadline for Revenue Bill Transmittal

HB 669 Introduced by Story, et al. *LC0507 Drafter: Martin*

Revise and Clarify the Valuation of Railroad Transportation Property for the Purposes of Property Taxation;...

3/13 Introduced and 1st Reading
3/13 Referred to Taxation
3/13 Fiscal Note Requested
3/18 Hearing
3/18 Fiscal Note Received
3/18 Fiscal Note Signed

3/19	Fiscal Note Printed		
3/22	Committee Executive Action--Bill Passed as Amended	20	0
3/22	Committee Report--Bill Passed as Amended		
3/24	2nd Reading Passed	97	2
3/25	3rd Reading Passed	96	4
	Transmitted to Senate		
3/26	Referred to Taxation		
4/08	Hearing		
4/09	Committee Executive Action--Bill Concurred as Amended	9	0
4/09	Committee Report--Bill Concurred as Amended		
4/12	2nd Reading Concurred	48	1
4/13	3rd Reading Concurred	50	0
	Returned to House with Amendments		
4/16	2nd Reading Senate Amendments Concurred	98	0
4/17	3rd Reading Passed as Amended by Senate	94	5
4/17	Sent to Enrolling		
4/20	Returned from Enrolling		
4/21	Signed by President		
4/21	Signed by Speaker		
4/22	Transmitted to Governor		
4/30	Signed by Governor		
5/04	Chapter Number Assigned		
	Chapter Number 531		
	Effective Date: 4/30/1999 - All Sections		

HB 670 Introduced by Eggers, et al. *LC1645 Drafter: Maly*

Establish a State-Tribal Economic Development Commission That Is Administratively Attached to the Governor's Office;...

1/14	Fiscal Note Needed		
3/15	Introduced and 1st Reading		
3/15	Referred to Business and Labor		
3/15	Fiscal Note Requested		
3/19	Fiscal Note Received		
3/19	Fiscal Note Signed		
3/20	Fiscal Note Printed		
3/23	Hearing		
3/25	Committee Executive Action--Bill Passed as Amended	18	0
3/25	Committee Report--Bill Passed as Amended		
3/25	Revised Fiscal Note Requested		
3/25	Revised Fiscal Note Received		
3/25	Revised Fiscal Note Signed		
3/26	Missed Deadline for Appropriation Bill Transmittal		
3/26	Revised Fiscal Note Printed		
3/26	2nd Reading Passed as Amended	60	36
3/26	Taken from 2nd Reading; Rereferred to Appropriations	66	34
3/31	Hearing		
3/31	Committee Executive Action--Bill Passed as Amended	12	6
3/31	Committee Report--Bill Passed as Amended		
4/07	2nd Reading Passed	73	25
4/08	3rd Reading Passed	71	29
	Transmitted to Senate		
3/25	Rules Suspended to Allow for Late Transmittal of Bill	49	0
4/09	Referred to State Administration		

HOUSE BILL NO. 669

INTRODUCED BY _____ (Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE VALUATION OF RAILROAD TRANSPORTATION PROPERTY FOR THE PURPOSES OF PROPERTY TAXATION; SPECIFYING THE METHODS TO BE USED BY THE DEPARTMENT OF REVENUE IN THE VALUATION OF RAILROAD TRANSPORTATION PROPERTY; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-23-101 AND 15-23-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-23-101, MCA, is amended to read:

"**15-23-101. Properties centrally assessed.** The department ~~of revenue~~ shall centrally assess each year:

(1) ~~the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property~~ the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including but not limited to telegraph, telephone, microwave, and electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by ~~the~~ congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(3) all property of scheduled airlines;

(4) the net proceeds of mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12."

INTRODUCED BILL

HB 669

NEW SECTION. **Section 2. Definitions.** As used in this part, unless the context requires otherw the following definitions apply:

(1) (a) "Base value" means, except as provided in subsection (1)(b), the system value of rail transportation property of a railroad in the preceding tax year. If the railroad was not subject to valua in the previous tax year, the base value is the value determined by the department using accepted unit va methods. If the ownership of the railroad changes, the base value is not affected and must be transfer to the new owner.

(b) For tax year 1999, base value means the system value of railroad transportation property us to determine the railroad's Montana property taxes paid for the 1998 tax year.

(2) "Capitalization rate" means the capitalization rate reported by the surface transportation boa provided for in 49 U.S.C. 701, in its annual cost of capital report.

(3) "Change in earnings" means the value determined by dividing the average earnings for the years immediately preceding the current tax year by the average earnings for the 5 years immediate preceding the previous tax year.

(4) "Change in the capitalization rate" means the value derived by dividing the current ye capitalization rate by the preceding year capitalization rate.

(5) "Earnings" means income realized before deducting depreciation, interest expenses, lea expenses, and taxes.

(6) "Gross profit margin" means the ratio of earnings to operating revenue.

(7) "Leased property" means property that is subject to an agreement that transfers the use of th property to the lessee during the term of the lease and that is not capitalized on the lessee's balance shee

(8) "System cost" means the total depreciated cost of all railroad transportation property, including leased property within the state and outside the state.

Section 3. Section 15-23-202, MCA, is amended to read:

"15-23-202. Assessment -- how made. (1) The department ~~must~~ shall assess the ~~franchise, roadway, roadbed, rails, rolling stock, and all other operating properties~~ railroad transportation property o all railroads operated in more than one county or more than one state as provided in this section. ~~All rolling stock must be assessed in the name of the person owning, leasing, or using the same.~~ Assessment mus

be made to the person owning or leasing or using the ~~same~~ property and must be made upon the entire railroad within the state. ~~The depots, stations, shops, and buildings erected upon the space covered by the right-of-way and all other property owned or leased by such person, except as above provided, shall be assessed by the department.~~

(2) The department shall determine the value of the railroad system for the current year by multiplying the base value of the railroad by the value change factor determined under subsection (3).

(3) (a) The value change factor is the sum of the income change factor, weighted by 50%, the gross profit margin change factor, weighted by 25%, and the property change factor, weighted by 25%.

(b) The income change factor is determined by dividing the change in earnings by the change in the capitalization rate.

(c) The gross profit margin change factor is determined by dividing the average gross profit margin for the 2 years immediately preceding the current tax year by the average gross profit margin for the 2 years immediately preceding the previous tax year.

(d) The property change factor is determined by dividing the system cost reported by the railroad for the tax year immediately preceding the current tax year by the system cost reported by the railroad for the tax year immediately preceding the previous tax year.

(4) The department shall apportion the system value of the railroad to Montana by multiplying the system value of the railroad determined under subsection (2) by the allocation factor determined under subsection (5).

(5) The allocation factor used to apportion the system value of the railroad to Montana is the average of the sum of:

(a) the ratio of track miles in the state to total system track miles;

(b) the ratio of revenue ton miles in the state to total system revenue ton miles;

(c) the ratio of gross investment in road and equipment in the state to total system gross investment in road and equipment;

(d) the ratio of operating revenue reported in the state to total system operating revenue; and

(e) the ratio of railroad car and locomotive miles in the state to total system railroad car and locomotive miles.

(6) The department shall take into account extenuating circumstances to adjust the assessed value of railroad property in the state. Occurrences that may result in an adjustment to the assessed value of

railroad property include but are not limited to:

(a) extraordinary, unusual, or infrequent events that are material in nature and of a character different from the typical or customary business operations, that are not expected to recur frequently, and that are not normally considered in the evaluation of the operating results of a business; and

(b) material increases or decreases in income and property as a result of events such as writeoffs, writedowns, and changes in accounting methods or practices.

~~(2)~~(7) In determining the taxable value of railroad property, the department shall determine the percentage rate "R" provided for in 15-6-145 in order to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended."

NEW SECTION. **Section 4. Codification instruction.** (1) [Section 2] is intended to be codified as an integral part of Title 15, chapter 23, part 2, and the provisions of Title 15, chapter 23, part 2, apply to [section 2].

(2) (a) Section 15-23-201 is intended to be renumbered as 15-23-204.

(b) Section 15-23-202 is intended to be renumbered as 15-23-205.

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

- END -

FISCAL NOTE

Bill #: **HB0669**

Title: Clarify and revise tax valuation of rail transportation property

Primary Sponsor: **Bob Story**

Status: As introduced

Sponsor signature — Date

Dave Lewis, Budget Director — Date 3-18-99

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:		
School GTB (GF)	$8,149	$8,800
Revenue:		
General Fund	($26,334)	($53,590)
State Special Revenue	(2,724)	(5,542)
Net Impact on General Fund Balance:	**($34,483)**	**($62,390)**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. An average two percent growth is anticipated for centrally assessed companies included in this proposal.
2. Railroad companies will be appraised using a formula that includes three change factors. The formula will reflect in all components of its three change factors the annual average two percent growth anticipated for centrally assessed companies.
3. The gross profit margin change factor will recognize the two percent growth in both earnings and operating revenue components rendering a change factor of 1.0 or "no change" in the gross profit margin.
4. The anticipated loss in taxable value of railroad companies due to the implementation of the proposed appraisal formula is $293,741 in FY2000 and $597,762 in FY2001. The anticipated loss in tax revenue from railroad companies is $107,224 in FY2000 and $218,201 in FY2001.
5. The estimated loss in property tax revenue for the 95-mill levy is $26,120 for FY2000 and $53,154 for FY2001.

HB 669

6. The estimated loss in property tax revenue for the 1.5 vo-tech mill levy is $214 for FY2000 and $436 for FY2001.
7. The estimated loss in property tax revenue for the 9-mill state assumption of welfare is $1,072 in FY2000 and $2,182 in FY2001.
8. The estimated loss in property tax revenue for the 6-mill university levy is $1,651 in FY2000 and $3,360 in FY2001.
9. The estimated loss in property tax revenue due to this proposal on local governments is $78,167 in FY2000 and $159,069 in FY2001.
10. The reduction in taxable values will cause school districts to increase GTB levies in FY2000 and FY2001 to maintain minimum budgets required under section 20-9-308(1)(a), MCA. The higher levies will increase the amount of state GTB aid by $8,149 in FY2000 and $8,800 in FY2001. In subsequent years the statewide GTB will be adjusted resulting in changes in state GTB aid.

FISCAL IMPACT:	FY2000 Difference	FY2001 Difference
Expenditures:		
School GTB	$8,149	$8,800
Funding:		
General Fund (01)	$8,149	$8,800
Revenues:		
General Fund (01)	($26,334)	($53,590)
State Special Revenue (02)	(2,724)	(5,542)
Net Impact to Fund Balance (Revenue minus Expenditure):		
General Fund (01)	($34,483)	($62,390)
State Special Revenue (02)	(2,724)	(5,542)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
It is estimated that the proposal will result in a reduction in property tax revenue for local governments and schools of $78,167 in FY2000 and $159,069 in FY2001.

LONG-RANGE IMPACTS:
It is estimated that the proposal will result in an on-going reduction in property tax revenue. The table below illustrates the allocation of tax revenue loss for FY2002 through FY2005:

	2002	2003	2004	2005
95 mills	(81,127)	(110,062)	(139,986)	(170,924)
1.5 mills	(666)	(904)	(1,149)	(1,403)
6 mills	(5,129)	(6,958)	(8,850)	(10,806)
9 mills	(3,330)	(4,518)	(5,747)	(7,017)
Local Gov	(242,780)	(329,373)	(418,923)	(511,509)
Total	(333,032)	(451,815)	(574,655)	(701,659)

TECHNICAL NOTES:

1. Market value definitions would need to be changed to include this formula methodology as a market value methodology. Currently the market value definition has no exception that would allow this type of formula to qualify as an approach to market value.
2. Section 2(1) includes potentially conflicting statements. The first statement indicates that railroad property new to the state shall be appraised using accepted unit value methods. The next statement indicates that if ownership of an existing railroad changes hands, the base value transfers with ownership. In the case of a merger, the acquiring company could have both new property to the state and property that the acquiring company is in the process of purchasing in Montana which is existing railroad property. Clarification is needed regarding how to use two different appraisal methods for the same company.
3. Section 2(3) requires six years of data for assessment purposes. Clarification should be offered regarding how to treat the circumstance where the required data does not exist.
4. Section 2(6) defines gross profit margin with the term operating revenues. Operating revenues should be defined as well.
5. Because of the effective date (on passage and approval), amendments may be necessary to allow adequate time for (1) companies to meet their reporting requirements, (2) the department to calculate the assessed value and (3) companies to exercise their appeal rights.
6. The definition of "base value" will require the department to accept previous year values as the starting point for all future years. Current year values include property appraisals determined by settlement rather than by appraisal methods. In general, the department has opposed the concept of using a settlement value as a basis for future assessment values.

HOUSE

TAXATION

CHAIR: Hibbard, Chase

VICE CHAIR: Gillan, Kim
Story, Bob

MEMBERS:

Beck, Gary
Dale, Rick
Davies, Bob
Erickson, Ron
Fuchs, Daniel
Guggenheim, Mary Anne
Hanson, Marian
Harper, Hal
Harrington, Dan
Holden, John
Jackson, Verdell
Orr, Scott
Raney, Bob
Rehbein, Bill
Rose, Sam
Schmidt, Trudi
Somerville, Roger

SECRETARY: Grace, Donna

LEGISLATIVE STAFF: Martin, Jeff

HB 661 SPONSOR: Rehbein, Bill SHORT TITLE: Revise taxation of oil production from a stripper well
REFERRED ON: 03/08/1999 HEARD ON: 03/15/1999
EXECUTIVE ACTION: 03/23/1999 Bill Passed as Amended -- VOTE: 12 - 8
FINAL DISPOSITION 05/04/1999 Chapter Number Assigned

HB 662 SPONSOR: Walters, Allan SHORT TITLE: Eliminate tax on portion of motor vehicles
REFERRED ON: 03/08/1999 HEARD ON: 03/15/1999
TABLED ON: 03/15/1999
FINAL DISPOSITION 03/31/1999 (H) Missed Deadline for Revenue Bill Transmittal

HB 665 SPONSOR: Facey, Tom SHORT TITLE: Revise assessment & taxation of new improvements
REFERRED ON: 03/10/1999 HEARD ON: 03/19/1999
TABLED ON: 03/25/1999
FINAL DISPOSITION 03/31/1999 (H) Missed Deadline for Revenue Bill Transmittal

HB 667 SPONSOR: Hibbard, Chase SHORT TITLE: Revise rate for class 10 property
REFERRED ON: 03/11/1999
FINAL DISPOSITION 03/31/1999 (H) Missed Deadline for Revenue Bill Transmittal

HB 668 SPONSOR: Hibbard, Chase SHORT TITLE: Specify methods of assessing class 9 and class 12 properties
REFERRED ON: 03/11/1999 HEARD ON: 03/18/1999
TABLED ON: 03/22/1999
FINAL DISPOSITION 03/31/1999 (H) Missed Deadline for Revenue Bill Transmittal

HB 669 SPONSOR: Story, Bob SHORT TITLE: Clarify and revise tax valuation of rail transportation property
REFERRED ON: 03/13/1999 HEARD ON: 03/18/1999
EXECUTIVE ACTION: 03/22/1999 Bill Passed as Amended -- VOTE: 20 - 0
FINAL DISPOSITION 05/04/1999 Chapter Number Assigned

HB 671 SPONSOR: Bitney, Rod SHORT TITLE: Subdivision lot to retain tax base until sold
REFERRED ON: 03/17/1999 HEARD ON: 03/22/1999
TABLED ON: 03/23/1999
FINAL DISPOSITION 03/31/1999 (H) Missed Deadline for Revenue Bill Transmittal

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN CHASE HIBBARD**, on March 18, 1999 at 8:00 A.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Chase Hibbard, Chairman (R)
Rep. Kim Gillan, Vice Chairman (D)
Rep. Bob Story, Vice Chairman (R)
Rep. Gary Beck (D)
Rep. Rick Dale (R)
Rep. Bob Davies (R)
Rep. Ron Erickson (D)
Rep. Daniel Fuchs (R)
Rep. Mary Anne Guggenheim (D)
Rep. Marian Hanson (R)
Rep. Hal Harper (D)
Rep. Dan Harrington (D)
Rep. John L. Holden (R)
Rep. Verdell Jackson (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Trudi Schmidt (D)
Rep. Roger Somerville (R)

Members Excused: None.

Members Absent: None.

Staff Present: Donna Grace, Committee Secretary
Jeff Martin, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:

HB 658 - 3/10/1999
HB 657 - 3/10/1999
HB 668 - 3/11/1999
HB 669 - 3/15/1999

Executive Action:

HB 174 - Discussion

HEARING ON HB 658

Opening Statement by Sponsor:

Rep. Edith Clark, House District 88
{Tape : 1; Side : A; Approx. Time Counter : 3.8}

Proponents' Testimony:

Carl Weniger, North Montana Oil and Gas Association
{Tape : 1; Side : A; Approx. Time Counter : 6.1}

Elaine Mitchell, Accountant and Income Tax Preparer
{Tape : 1; Side : A; Approx. Time Counter : 7.3}

Gail Abercrombie, Exective Director, Montana Petroleum **Association**
{Tape : 1; Side : A; Approx. Time Counter : 9.1}

Dean Mitchell, Cut Bank, Small Oil Producer
{Tape : 1; Side : A; Approx. Time Counter : 9.9}

Gary Feland, Shelby
{Tape : 1; Side : A; Approx. Time Counter : 11.3}

Jane Jelenski, Montana Association of Counties EXHIBIT(1)
{Tape : 1; Side : A; Approx. Time Counter : 12.1}

Jerome Anderson, Shell Oil
{Tape : 1; Side : A; Approx. Time Counter : 13.4}

Patrick Montalban, Northern Montana Oil and Gas Association EXHIBIT(2)
{Tape : 1; Side : A; Approx. Time Counter : 14.3}

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 5}

Closing by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 2.6}

HEARING ON HB 669

Opening Statement by Sponsor:

Rep. Bob Story, House District 24
{Tape : 3; Side : A; Approx. Time Counter : 6.0}

Proponents' Testimony:

Dennis Burr, Montana Taxpayers Association
{Tape : 3; Side : A; Approx. Time Counter : 6.5}

Steve Kaleczyk, Burlington Northern Santa Fee
{Tape : 3; Side : A; Approx. Time Counter : 7.4}

Russ Ritter, Montana Raillink
{Tape : 3; Side : A; Approx. Time Counter : 7.7}

Opponents' Testimony:

None.

Informational Testimony:

Mary Bryson, Director, Department of Revenue
{Tape : 3; Side : A; Approx. Time Counter : 7.9}

Questions from Committee Members and Responses:

{Tape : 3; Side : A; Approx. Time Counter : 8.7}

Closing by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 10.8}

EXECUTIVE ACTION ON HB 668

Motion: **Rep. Hibbard moved Do Pass on HB 668**
{Tape : 3; Side : B; Approx. Time Counter : 18.7 - 19.4}

Discussion:

{Tape : 3; Side : B; Approx. Time Counter : 19.4 - 25.3}

Motion: **Rep. Hibbard moved the Amendments #66801**
{Tape : 3; Side : B; Approx. Time Counter : 25.3 - 25.5}

Discussion:

{Tape : 3; Side : B; Approx. Time Counter : 25.5 - 27.3}

Rep. Somerville discussed an Amendment segregating #10.
{Tape : 3; Side : B; Approx. Time Counter : 27.8 - 28.9}

Discussion:

{Tape : 4; Side : A; Approx. Time Counter : 0.1 - 7.7}

Motion/Vote: **Rep. Hibbard moved to TABLE HB 668. Motion passed 16-4 with Rep. Fuchs, Rehbein, Jackson and Davies voting no.**
{Tape : 4; Side : A; Approx. Time Counter : 7.7 - 8.4}

EXECUTIVE ACTION ON HB 669

Motion: **Rep. Story moved Do Pass**
{Tape : 4; Side : A; Approx. Time Counter : 8.4 - 8.8}

Motion: **Rep. Story moved Amendment #66901**
{Tape : 4; Side : A; Approx. Time Counter : 8.8 - 9.2}

Discussion:

{Tape : 4; Side : A; Approx. Time Counter : 9.2 - 10.9}

Vote: **Motion on Amendment #66901 passed 18-0**
{Tape : 4; Side : A; Approx. Time Counter : 10.9 - 11}

Discussion: **EXHIBIT(2)**

{Tape : 4; Side : A; Approx. Time Counter : 11 - 29.3}
{Tape : 4; Side : B; Approx. Time Counter : 0.1 - 0.7}

Vote: **Motion HB 669 Do Pass as Amended passed unanimously 20-0**
{Tape : 4; Side : B; Approx. Time Counter : 0.7 - 0.9}

ADJOURNMENT

Adjournment: 11:45 A.M.

REP. CHASE HIBBARD, Chairman

DONNA GRACE, Secretary

CH/DG

SENATE

TAXATION

CHAIR: Devlin, Gerry **VICE CHAIR: DePratu, Bob**

MEMBERS:

Bohlinger, John	**Eck, Dorothy**
Ekegren, Pete	**Ellingson, Jon**
Ellis, Alvin	**Glaser, Bill**
Stang, Spook	

SECRETARY: Barnes, Sandy

LEGISLATIVE STAFF: Heiman, Lee

HB 656 SPONSOR: Bookout-Reinicke, Sylvia SHORT TITLE: Revise tax deed process
REFERRED ON: 03/26/1999 HEARD ON: 04/09/1999
EXECUTIVE ACTION: 04/09/1999 Bill Concurred -- VOTE: 9 - 0
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HB 657 SPONSOR: Davies, Bob SHORT TITLE: Estate and trust deductibility of state and federal taxes
REFERRED ON: 03/27/1999 HEARD ON: 04/09/1999
EXECUTIVE ACTION: 04/09/1999 Bill Concurred -- VOTE: 8 - 1
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HB 658 SPONSOR: Clark, Edith SHORT TITLE: Revise local government severance tax to include "stripper well exemption"
REFERRED ON: 03/26/1999 HEARD ON: 04/09/1999
EXECUTIVE ACTION: 04/12/1999 Bill Concurred as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HB 659 SPONSOR: Menahan, Red SHORT TITLE: Provide minimum amount for tax refund or bill as a result of revised assessment
REFERRED ON: 03/27/1999 HEARD ON: 04/09/1999
EXECUTIVE ACTION: 04/09/1999 Bill Concurred -- VOTE: 9 - 0
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HB 661 SPONSOR: Rehbein, Bill SHORT TITLE: Revise taxation of oil production from a stripper well
REFERRED ON: 03/30/1999 HEARD ON: 04/07/1999
EXECUTIVE ACTION: 04/12/1999 Bill Concurred as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 05/04/1999 Chapter Number Assigned

HB 669 SPONSOR: Story, Bob SHORT TITLE: Clarify and revise tax valuation of rail transportation property
REFERRED ON: 03/26/1999 HEARD ON: 04/08/1999
EXECUTIVE ACTION: 04/09/1999 Bill Concurred as Amended -- VOTE: 9 - 0
FINAL DISPOSITION 05/04/1999 Chapter Number Assigned

HB 674 SPONSOR: Hibbard, Chase SHORT TITLE: Revise recovery and deposit of accommodations tax paid by state agencies
BY REQUEST OF: (H) Taxation Standing Committee
REFERRED ON: 04/10/1999 HEARD ON: 04/13/1999
EXECUTIVE ACTION: 04/13/1999 Bill Concurred as Amended -- VOTE: 9 - 0
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on April 8, 1999 at 8:00 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. E. P. "Pete" Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis Jr.(R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 513, 3/29/1999; HB 638, 3/29/1999; HB 651, 3/29/1999; HB 652, 3/29/1999; HB 669, 3/29/1999

Executive Action: HB 513; HB 632; HB 386; HB 654; HB 569

HEARING ON HB 638

Sponsor: **REPRESENTATIVE ROGER SOMERVILLE, HD 78, KALISPELL**

Proponents: **Ben Haberman, Semitool, Inc.**

Questions from Committee Members and Responses:

CHAIRMAN DEVLIN asked if a person had $10,000 and turned that over every year, eventually he could get taxed out of the whole works under the present law, and **Mr. Johnson** said he would pay the tax on the income and the income on that investment counts toward the income for the credit. Theoretically, you pay tax on the basis of the original $10,000 invested, and that is taxed already. **CHAIRMAN DEVLIN** said, though, if that $10,000 was rolled over every year, a taxpayer could get taxed on the $11,000 every year. **SEN. STANG** said that is not quite correct because it is considered as part of a taxpayer's income to determine the credit, but he is not taxed on the $10,000, only the $1,000. What is happening is that that $10,000 is included as income toward the credit, so it is an eligibility issue.

SEN. ELLIS asked **Mr. Johnson** if he had seen the language in **SB 424**, and he said he had. **SEN. ELLIS** asked which bill was most appropriate, and **Mr. Johnson** said the Society feels that the language in **HB 652** is more broad and more concise with respect to the items that should be called income. **SEN. ELLIS** asked, then, if this amendment should be made to that bill rather than the other way around, and **Mr. Johnson** said that was the Society's position.

Closing by Sponsor:

REP. GUGGENHEIM had no closing statement. She asked **SEN. BOHLINGER** to carry it.

EXECUTIVE ACTION ON HB 652

SEN. STANG asked **Mr. Heiman** if there was any conflict with **SB 424** on **HB 652**. **Mr. Heiman** said there is a conflict. He suggested that this bill be coordinated with **SB 424** so the two could really work well together. **CHAIRMAN DEVLIN** asked **Mr. Heiman** if that could be done, and he said he could do that.

Motion/Vote: SEN. GLASER MOVED PROPOSED AMENDMENT TO HB 652 COORDINATING WITH SB 424. Motion carried 8-0.

Motion/Vote: SEN. GLASER MOVED THAT HB 652 BE CONCURRED IN AS AMENDED. Motion carried 8-0.

HEARING ON HB 669

Sponsor: REPRESENTATIVE ROBERT R. STORY JR., HD 24, PARK CITY

Proponents: **Stan Kaleczyc, Burlington Northern/Santa Fe**
Alec Vincent, Burlington Northern/Santa Fe
Dennis Burr, Montana Taxpayers Association

Opponents: **None**

Informational Testimony: **Mary Bryson, Director, Department of Revenue**

Opening Statement by Sponsor:

REP. BOB STORY, HD 24, Park City, said that **HB 669** puts into statute the methodology for valuing railroad properties. He said in the past, regarding centrally assessed property, the statutes basically say "the Department will assess the value of the property." That makes it very difficult for centrally assessed companies to plan because they have no concept of what their value and tax requirements are going to be. This bill brings a formula that will be used on railroad property to determine what the assessed value will be. It should put some predictability into the system not only for the railroads but also for the taxing jurisdictions that depend on those properties for a part of their budget.

Proponents' Testimony:

Stan Kaleczyc, Burlington Northern/Santa Fe, said in 1976 Congress passed the 4Rs Act. That statute has a provision in it that says railroads are to be taxed like all other commercial and industrial properties. However, it did not become effective until 1979, so the states had three years to implement the federal legislation. Ever since 1979, each year the railroad has protested its property taxes. Two years ago the railroad and the Department of Revenue agreed on a methodology that they would use on an experimental basis to measure the change in value of railroad property from year to year. That formula that was agreed to at that time looks to more objective criteria and reduces the potential for disagreement on the valuation of the railroad property. **HB 669** is a codification of that methodology that has been in place for the last two years.

Mr. Kaleczyc said this methodology has important benefits to all parties. The process is a more objective method and decreases the likelihood of lawsuits and disagreements and protests. It is a more predictable indicator of taxes from year to year, and provides more stability to the taxing system. This is a benefit not only to the taxpayer, but also the Department of Revenue and local governments.

Alec Vincent, Director of Taxes, Burlington Northern/Santa Fe Railroad Company, said he is here from Chicago to ask this committee to support **HB 669**. He said there are three different change factors in this bill: 1) an income change factor, 2) a gross profit margin change factor, and 3) an investment change factor. This bill looks at the year-to-year changes and the objective values of those factors to determine how much overall change should be applied to the base year value.

Mr. Vincent said this formula is a more effective, predictable way to determine what the railroad's liability would be going forward. This has worked well for two years on an experimental basis, and it was decided to codify the method. That is what this bill does.

Mr. Vincent said the three variables are income, gross profit margin and investment. The values for these variables are taken out of published documents that are filed with federal regulatory agencies and also with the state as part of the railroad's property tax return. Those numbers are then plugged into this formula and the number falls out at the bottom. There are no subjective variables involved, and the railroad lives by the number, up or down.

Dennis Burr, Montana Taxpayers Association, said his organization is in favor of **HB 669**. He said his main interest in this bill is the stability in dealing with railroads and other centrally assessed properties. He said these are probably the largest investors in the state of Montana. The way the property tax is presently structured, these entities have the least ability to predict what their taxes are going to be in ongoing years. He urged support for this proposed legislation.

Opponents' Testimony: None

Informational Testimony:

Mary Bryson, Director, Department of Revenue, said that **HB 669** provides stability for both governments and taxpayers and predictability regarding the tax base and taxes paid. However, on the other side of that, after the base value is established, it cannot be changed. Base values may not reflect market value. It does provide that predictability, but it also makes for some inflexibility to the process we have in place today and to the assessed values. The formula is fairly rigid and fairly inflexible. It is slow to recognize change, which does provide stability, but does not recognize potential justified increases or potential justified decreases as quickly as can be done today, and it does provide one industry special treatment under current

law. Property that is in the same class will have different appraisal methods if the formula is adopted because this is consideration of railroad property only and not other properties that are also in class twelve, and there is little or no growth that could occur.

Questions from Committee Members and Responses:

SEN. ELLINGSON asked if someone from the Department could describe or define the formula. **Gene Walborn, Department of Revenue**, distributed an example of the railroad formula calculation worksheet, **EXHIBIT(6)**. He said the first part is the actual determination of how the Montana market value is determined. The middle section on the first page is the formula itself and the three change factors that are addressed in the bill. The last part of the first page is the detailed information used to arrive at those change factors. Page 2 shows the property change factor information, and the last part is the allocation information that the Department uses.

SEN. ELLINGSON asked if there were three variables, the income of an entity, the gross profit margin, because that goes up and down, and a property factor, which would be additions to property within the state of Montana or systemwide. **Mr. Walborn** said the property factor is specific to Burlington Northern/Santa Fe's system throughout the United States. He said these three change factors are shown in the middle of the first page. He said this example is incorrect in that it does not reflect depreciation, and it shows a single year, while the formula is actually set up on a two-year allocation average.

CHAIRMAN DEVLIN asked if historically there are negotiations after the tax bill is sent and usually a reduction in those taxes follows that negotiation. **Mr. Walborn** said typically there has been a settlement of one type or another. **CHAIRMAN DEVLIN** asked if the taxes were ever raised through those negotiations, and **Mr. Walborn** said in his experience that had not been done.

SEN. DEPRATU said the Fiscal Note shows a $100,000 hit, and on line 1, it talks about an anticipated growth of 2%. He said there had been testimony that there has been growth in the last two years, and he wondered if that was about accurate as to that growth. **Pat Keim, Burlington Northern/Santa Fe**, said the growth rate over the past two years has been more in the area of 10%. **Mr. Walborn** said that 2% figure comes from **HB 2**, which says that centrally assessed companies will grow at the rate of 2% per year.

SEN. BOHLINGER asked if the Fiscal Note were recalculated with the information that has been made available concerning the growth within the company, would the hit to the General Fund go away. **Mr. Walborn** said that that potential could be there. As **Ms. Bryson** said earlier, from 1990 assessments to 1998, the system value went up on the top part of the change factor, but the allocation percentage went down. He said he cannot predict what that allocation factor might do, although adding the two-year allocation will help that level out. **SEN. BOHLINGER** said that the railroad investments in Montana are higher than any other state, and he wondered why this Montana allocation factor is so low. **Mr. Walborn** said this worksheet is just an example, it is not for Burlington Northern/Santa Fe. He said Burlington Northern/Santa Fe is around 7%. Montana has about 7%. He pointed out that the second page of the example shows how the allocation factor works.

CHAIRMAN DEVLIN asked whether the company would no longer protest their taxes if this bill is passed, and **Mr. Vincent** said that based on this bill, he would not anticipate having a valuation-type case, which was the reason for the disputes referred to. He said there is a similar formula in place in the state of Arizona. **Mr. Vincent** said they had had eight years of federal litigation in Arizona, and at the end of that time, there was an agreement to put this type of formula into place. That took place in 1992, and from that time forward, the railroad files a three-page return and that is what they pay. There have been no disputes in Arizona since 1992. **CHAIRMAN DEVLIN** asked, though, if without this legislation they would definitely dispute their taxes. **Mr. Vincent** that they would have no choice but to dispute them.

SEN. GLASER asked if the state is no longer arbitrating with the railroad over the annual tax bill, would the Department be saving some staff time. **Mr. Walborn** said that centrally assessed property is valued annually in a three-month period, and the staff works overtime to do that. He said this may reduce that somewhat, but it will not reduce staff time overall.

SEN. DEPRATU asked if this formula had been used for the last two years and whether it had worked, and **Mr. Walborn** said it has been used for two years, but it is a year-to-year agreement; however, the formula was used to arrive at a final tax, and it has worked.

SEN. ECK said at one time it was suggested that railroads should be valued at scrap value, and she wondered if that might still be true. **Mr. Walborn** said that refers to a summation appraisal, and sometimes those are higher and sometimes they are lower.

SEN. BOHLINGER said in the formula presented, 50% of the value is based on an income change factor and 25% of the value is based on a gross profit margin factor, and 25% on the property factor based on original cost. He asked if this methodology is used universally amongst railroads, or is this particular to Montana. **Mr. Walborn** said this formula is used in one other state, Arizona. **SEN. BOHLINGER** asked **Mr. Vincent** if Arizona's formula is weighted in the same manner as in this proposed legislation, and **Mr. Vincent** said it is basically the same weighting and same formula in Arizona. He said the variables that are used in this formula are also used in all other states to determine the value of all centrally assessed taxpayers.

SEN. STANG asked if all the technical notes have been addressed, and **Mr. Walborn** said the first one does not require a change, the second one has been addressed, the third one is somewhat addressed in that the Department can handle this through administrative rules, and the fourth one has not been addressed but could probably also be addressed through administrative authority. **SEN. STANG** asked, then, whether **REP. STORY** would be comfortable with the Department having administrative authority or if that definition should be made statutory as to the definition agreed upon by the Department and the railroad. **REP. STORY** said the purpose of the bill is to get as much laid out in the statutes as possible, but he did not have a problem with it either way.

SEN. STANG then asked **Mr. Vincent** if the railroad and the Department could provide a definition of operating revenues that has been agreed upon, and **Mr. Vincent** said they could probably do that. He said the definition that is being used comes right out of the report that the railroad files with the Service Transportation Board, and there has never been a dispute as far as the definition of operating revenues. **SEN. STANG** asked if an amendment could be requested in that regard, and **CHAIRMAN DEVLIN** asked the railroad and the Department to provide that amendment.

SEN. ELLIS asked how long the dispute usually takes when the taxes are paid in protest and therefore are not available to the taxing jurisdictions, and **Mr. Kaleczyc** said in recent years the protests have been resolved in a fairly timely way so that there has been no large-scale disruption. Historically, however, in the 1980s, the federal court litigation generally was lasting somewhere around three years. **SEN. ELLIS** said if this legislation is a resolution of this problem that is mutually acceptable, why does the Fiscal Note show slowly increasing fiscal long-range impacts. **Mr. Walborn** said the Department has some concerns about formulas and for what taxpayer, but the graph

that shows an escalating negative revenue is the way the impact is calculated.

SEN. ELLINGSON said he is concerned about the first two factors. He asked if the income change factor is not a factor that reflects the gross income but reflects actual earnings. **Mr. Vincent** said this would be earnings before interest, depreciation and taxes, and the same factor is employed in both of those calculations. **SEN. ELLINGSON** said his concern is what the impact would be on taxable value and therefore tax revenue if the railroad industry had a sustained decline or depression so that over a five-year period there were no earnings. He wondered if the top two factors would be zero, and railroad property in the state would only be valued on factor No. 3, which is only 25% of the total weighting factor. **Mr. Vincent** said he did not think that would happen because the earnings definition is not net earnings. He said it would be very difficult to have a zero value there. He said the concern about the downside trend is a valid one, and that is why the five-year averages were used, to moderate the increases and decreases.

SEN. ELLINGSON asked when interest, taxes, depreciation and lease rental expenses are added back into the earnings, what percentage of the gross revenue is being talked about. **Mr. Vincent** answered that it was 25%.

SEN. ELLINGSON referred to the last few questions of **Mr. Vincent,** and he asked **Mr. Walborn** if the Department was comfortable with those factors. **Mr. Walborn** said the five-year average helps to mitigate some of the swings. He said there could potentially be a problem with prolonged tailspins, but he felt that would be addressed with the five-year average.

SEN. DEPRATU said if Montana did not have this bill and simply continued as they have been, would the state still be in a negotiating position which would reflect that decline if the railroads should experience such a decline. **Mr. Walborn** said that would be the case with any industry, and hopefully the market value would reflect the economic realities of what is happening in that company.

Closing by Sponsor:

REP. STORY said that in the House there were two bills dealing with centrally assessed properties, one which dealt with every centrally assessed property out there, and then this railroad bill. He said the hearing in the House was actually on the other bill. When the hearing on this bill came up, because it had all been discussed in the other bill, the committee just shot this

one through. However, the other bill died because there were some problems, so the railroads were left in this bill. Because of that, he said he appreciated the thorough hearing on **HB 669.** He said he feels that the bill has some merit to it, and he hoped the committee would give it serious consideration.

CHAIRMAN DEVLIN asked who would carry this bill on the Senate floor, and **REP. STORY** asked if **SEN. DEPRATU** would carry it.

EXECUTIVE ACTION ON HB 386

SEN. ECK said there were many things about this bill she liked, especially the way it was mandated; however, it seems that somewhere decisions have to be made as to how many of these tax cuts we have, and they should be looked at and prioritized.

SEN. GLASER said he has looked at some of these bills and has prioritized them. He said he is going to go with **SB 184, SB 200** and **SB 260.**

SEN. ELLIS said he agreed with **SEN. GLASER,** with one exception. He said that while he endorses an income tax reduction, this is actually a credit for property tax, not the kind of income tax reduction that would result in economic incentives for Montana. As a result, he is not going to support this one.

Motion/Vote: SEN. GLASER MOVED THAT HB 386 BE TABLED. Motion carried 7-2 with DePratu and Stang voting no.

EXECUTIVE ACTION ON HB 654

SEN. ELLINGSON said **REP. SCHMIDT** had asked him to carry this bill, but he is not the accounting whiz that **SEN. STANG** is, and he felt that **SEN. STANG'S** concerns are well taken. However, he has also expressed the opinion that those concerns could be addressed if this were given a couple of years to work its way into the system. With that background, **SEN. ELLINGSON** felt the effective date should be a year or so out so that people can plan for this. That will deal with the concerns expressed and the one-time positive impact on the General Fund, which he is not comfortable with.

SEN. STANG said he did not have a problem with the concept of the bill. He said it suddenly requires that deductions be done on an accrual basis where they have been on a cash basis, so there is an inconsistency there. However, if the committee thinks this is a good idea, then he believed that **SEN. ELLINGSON** is right, it needs to be effective January 1, 2002, and should apply to tax years after December 31, 2000. That gives people a couple years

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on April 9, 1999 at 8:00 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. E. P. "Pete" Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis Jr.(R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 656, 3/29/99; HB 657, 3/29/99; HB 658, 3/29/99; HB 659, 3/29/99; HB 253, 3/29/99

Executive Action: HB 656, HB 659, HB 657, HB 651, HB 669, HB 638

HEARING ON HB 656

Sponsor: REPRESENTATIVE SYLVIA BOOKOUT-REINICKE, HD 71, ALBERTON

Proponents: Patricia Cook, Montana County Treasurers Association

he believes that it should be consistent and he will vote for the bill.

SEN. ELLIS said it is only fair that people who are recipients of trust income should be treated the same as all taxpayers, and this bill does that.

Mr. Miller explained to the committee that the Department took a very narrow view of what was deductible for that tax case, and the court sustained the Department. However, the Department could recognize the equity in the arguments, so when the CPAs brought forward this bill, the Department did not object. It is a fairness issue.

SEN. STANG said in that case he does not like the bill and would vote against it.

Vote: MOTION carried 8-1 with Stang voting no. SEN. ELLIS will carry the bill on the floor.

EXECUTIVE ACTION ON HB 651

CHAIRMAN DEVLIN said there were some amendments to this bill placed before each committee member this morning, and **Mr. Heiman** has looked these over. **Mr. Heiman** said he had checked the mechanics of the amendments, but he had not had a chance to look at the IRS Code section. **Mr. Miller** said the Department had sat down with the CPAs and the sponsor, and everyone agreed that these amendments make very clear how the Montana net operating loss will be calculated. He said the first amendment simply amends the title, the second amendment amends the reference as to which version of the Internal Revenue Code, the 1986 version, and the third amendment ties up the definitions contained in the Internal Revenue Code on that operating loss. Modifications will have to be made to make those work in the Montana environment, but this language allows the Department to do that.

Motion/Vote: SEN. ELLIS MOVED THE DEPARTMENT OF REVENUE AMENDMENTS, EXHIBIT(5). Motion carried 9-0.

Motion/Vote: SEN. ELLIS MOVED THAT HB 651 BE CONCURRED IN AS AMENDED. Motion carried 9-0.

EXECUTIVE ACTION ON HB 669

CHAIRMAN DEVLIN reminded the committee that this is the bill that has to do with railroad taxation.

Motion: SEN. GLASER MOVED THAT HB 669 BE CONCURRED IN.

Discussion:

SEN. BOHLINGER said he supports this legislation. This proposes a formula that will bring about predictability, which is important from a taxpayer's perspective, as well as from the state perspective and local governments' perspective. He said he feels the formula is fair and workable and understandable.

SEN. DEPRATU said this will also help level out some of the spikes, and make the revenue more of a wave. He said it helps both the railroads and the local governments.

SEN. STANG said he had a proposed amendment from the Department of Revenue. He said this amendment deals with the definition of the market value and how it is determined.

Gene Walborn, Department of Revenue, provided copies of the amendment proposed by the Department, **EXHIBIT(6).** He explained that the first, second and fourth amendments clarify that the proposed formula used to value railroad transportation property may be an exception to the market value standard. The third amendment provides a definition of operating revenue which the Department shall use in the proposed formula to value railroad transportation property.

Stan Kaleczyc, Burlington Northern/Santa Fe, said that with respect to the market value definition, this first appeared under the technical notes on the Fiscal Note in the House. He said there are two ways to address this issue: 1) by the language in the bill which references 15-8-111, and 2) to amend 15-8-111. He said both ways achieve the same end, and the railroad has no preference of one way over the other.

Mr. Kaleczyc said in regard to the amendment regarding operating revenue, there is no disagreement on that definition. This is taken directly out of the federal regulatory provisions for operating revenue. It could be handled through an administrative rule, and it is not necessary to put it into statute. He said from the railroad's perspective, these amendments are not harmful to the bill but don't necessarily improve the bill, either. If the amendments are put on the bill at this point, it would require it to go back to the House for further consideration.

SEN. STANG asked what the vote was in the House on **HB 669**, and **Mr. Kaleczyc** said on second reading it was 98/2, and on third reading 96/4.

SEN. STANG said that if this had been a close bill, he would be reluctant to put the amendment on and send it back to the House;

however, he said this amendment does clarify the bill, and it might well be worth the effort to put the amendment on and return it to the House.

Motion: SEN. STANG MOVED PROPOSED AMENDMENT OF DEPARTMENT OF REVENUE.

Discussion:

CHAIRMAN DEVLIN asked the Department, if these amendments were not put on in this committee, whether they would take them to the Governor for a Governor's amendatory veto. **Mr. Walborn** said he had not talked to the Director about that. **CHAIRMAN DEVLIN** said he was wondering how strongly the Department felt about the amendments. **Mr. Walborn** said the Department thinks it helps provide clarity.

SEN. GLASER asked, aside from clarity, what the amendments do to the bill legally. **Larry Allen, Department of Revenue,** said these amendments are substantive. The definition of market value would say this formula is market value, and the Department is not comfortable with that. They would rather amend 15-8-111 and say, "We don't know if this is market value or not, but whatever it is, it is okay. It is a legislative mandate." If not changed, other companies could come back and say there is a new way of determining market value, and suddenly there is the contention of how to determine market value for every other property that is centrally assessed.

SEN. DEPRATU said he would resist the amendments. If this is substantive, it should have been amended before it got to the Senate Taxation Committee.

SEN. STANG said he felt that if it needs to be done, it should be done correctly, through the amendments. He said this is a good solution to the problem.

Vote: Motion carried 5-4 with Devlin, Ekegren, Glaser and Depratu voting no. (Roll Call Vote #1)

Motion: SEN. STANG MOVED THAT HB 669 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. ECK asked if technical notes 5 and 6 had been addressed. **SEN. STANG** said there was testimony that those had been resolved. **SEN. ECK** said the bill still says it is effective on passage and approval, and the Department had said this would cause some

problems; however, they did not submit an amendment regarding that issue.

SEN. ECK asked about the definition of "base value." She said the Department has proposed a concept of using a settlement value as a basis for future assessments, and if the settlement value is used, it would be static. In other words, the base value would not increase. She said she also had concern about the long-term impacts on local governments.

SEN. STANG said that the Department had told him that the amendment takes care of the problem with the base value, but does not necessarily take care of the settlement issue. He said this is a consensus between the Department and the railroads, and it is policy that the state can afford and live with. He said he believes it will save a lot of litigation in the future.

SEN. ECK said the other issue that has not been considered is the cumulative tax benefits that railroads and others are deriving from this session by way of **SB 200** and utility adjustments because of the 4R Act. She said she favors this bill, but in the long-term, the legislature needs to recognize the benefits that are being passed out and the impacts of those.

SEN. ELLIS said the railroads deserve the fairness of the 4Rs Act, and because they have to go through Montana, we should not abuse this by unwarrantedly high taxes. He said he is in favor of moving the bill on.

Vote: **Motion carried 9-0. SEN. DEPRATU** will carry.

EXECUTIVE ACTION ON HB 638

Motion: SEN. STANG MOVED THAT HB 638 BE CONCURRED IN.

Discussion:

SEN. DEPRATU said this is a solid bill and is aimed at creating more jobs and directing it towards Montana development. He said he favors passage.

CHAIRMAN DEVLIN said he had a memo from **Mary Bryson, Department of Revenue,** in regard to what other benefits these companies might qualify for and whether they would overlap, **EXHIBIT(7).**

SEN. STANG said he liked the fact that all the research has to be done in Montana, and that it is only the direct costs that go into the research that qualify. He said if we can encourage